that it is to be paid in advance is on the landlord (i.e. the respondent). After considering the whole of the evidence on this point, I think the evidence as to the rent being payable in advance is inconclusive and the learned Magistrate has misdirected himself in arriving at the conclusion that the respondent had proved an express agreement that rent was payable in advance as that finding was against the weight of the evidence on the point.

Having come to the conclusion that the learned Magistrate was wrong in deciding that the rent was payable in advance, I must now consider whether his finding as to whether there was a good tender of the rents for November and December on the 27th December, 1951. He has found in effect that the appellant has not proved that there was an agreement that he should deduct assessment from the rent, but by such finding the learned Magistrate has misdirected himself on the law, having overlooked section 40 (continuing section) of the Town Board Enactment No. 19 of 1921, which reads as follows:—

"If the sum due from the owner of any house, building or land on account of any rate or fee is paid by the occupier thereof, such occupier may in the absence of any agreement to the contrary with the owner deduct from the next and following payments of his rent the amount which may have been so paid by him"

and has by such oversight failed to realise that the onus was on the respondent to prove that there was an agreement that assesment should not be deducted. I can find no evidence at all, neither was it alleged by respondent, that there was any such agreement between the parties. The appellant therefore quite properly deducted the assessment from the November and December rents and therefore the tender of $20 with the production of the receipt for the assessment was good tender of the rents for November and December, 1951.

It follows from the above that on the date of the notice to quit (i.e. 28th December, 1951) that the appellant's rent was not 14 days in arrear and the learned Magistrate's order for ejectment must be set aside.

In view of the above decision I find it unnecessary to go into the other points argued before me.

The appeal is allowed with costs here and in the Court below.

Appeal allowed.

PUBLIC PROSECUTOR v. LEE EE TEONG.

[A. Cr. J. (Thomson, J.) September 18, 1953]

[Ipoh — Criminal Appeal No. 53 of 1953]

Gaming — Common Gaming Houses Enactment (Cap. 47), ss. 4(i)(c) & 11 — Assisting in carrying on a public lottery — Evidence of person with special knowledge of methods of gambling — Admissibility of — Evidence Ordinance, No. 11 of 1950, ss. 45, 49 and 98 — Whether Judge or Magistrate can import his personal knowledge on the point in a criminal case.

In the absence of any direct statutory provision to the contrary the rule is that in a criminal prosecution the onus lies on the prosecution to prove every ingredient in the offence charged against the accused person. If the prosecution fail to produce evidence which is believed and which, if unrebutted, would make out every such ingredient then the case must be dismissed without the accused person being called upon to make his defence. If he is called upon to make his defence then the Court must consider the evidence as a whole and, if satisfied that every ingredient of the offence has been proved, then convict.

In a prosecution under section 4(i)(c) of the Common Gaming Houses Enactment (Cap. 47 F.M.S.) for assisting in carrying on a public lottery, the evidence of a detective or other person, who, by reason of experience has special knowledge of methods of gambling, is admissible under sections 49 & 98 (but not under section 45) of the Evidence Ordinance to prove that a document found in the possession of the accused relates to a lottery and thus to raise the presumption under section 11 of Cap. 47 that the accused assisted in the lottery.

But the evidence so given must, in itself, be sufficient to prove that:—

(a) The person giving it had special means (which he must describe) of knowing the habits of persons who conduct and assist in conducting lotteries, and,

(b) Persons who conduct lotteries or collect subscriptions thereto keep records of a particular sort, and,

(c) That the documents in evidence is, in his opinion, such a record.

It is not open to any Judge or Magistrate to import his personal knowledge on the point into a criminal trial so as to help out evidence for the prosecution which would otherwise be inadequate to support a conviction.

[Editorial Note:— The Common Gaming Houses Enactment (Cap. 47) has been repealed and replaced by Common Gaming Houses Ordinance, No. 26 of 1953; section 4(i)(c) has been substantially re-enacted.]

Cases referred to:—

(1) *Rex v. Lim Kim Watt* Braddell's C.G.H. 160.

(2) *Lee Seow Kuan v. Rex* (1940) M.L.J. 211.

(3) *Rex v. Tan Guan* Braddell C.G.H. 174.

(4) *Harilal Gordhan v. Emperor* (1937) A.I.R. Bombay 385, 386.

(5) *Sim Ah Song & anor. v. Rex* (1951) M.L.J. 150.

(6) *Rex v. Soh Eng Chiang* (1937) M.L.J. 247, 248.

CRIMINAL APPEAL.

I. T. Davies (Federal Counsel) for the appellant.

Respondent unrepresented.

Cur. Adv. Vult.

Thomson, J. : — The respondent to this appeal was charged before the Magistrate at Teluk Anson with assisting in carrying on a public lottery "To wit, the 1,000 characters lottery" in contravention of section 4 (i) (c) of the now repealed Common Gaming Houses Enactment. At the close of the case for the prosecution, the Magistrate held that there was no case to answer and accordingly acquitted and discharged the accused. Against that order of acquittal and discharge the Public Prosecutor has now appealed.

The evidence for the prosecution was that the accused was seen to be in possession of a sheet of paper, which was later recovered and produced in evidence, bearing a list of 57 numbers all except two of which consisted of three digits. Against each of these numbers was a sum of money which in each case was a multiple of 50 cents and these sums of money added up to $109. At the foot of the paper was a subtraction sum shewing that ten per cent had been deducted from $109 leaving an amount of $98.10. And when the accused was arrested almost immediately after throwing away this sheet of paper he was found to be in possession of that amount of $98.10.

A Chinese detective-sergeant then gave evidence to the effect that he was conversant with the 1,000 or 100 characters lottery but did not describe its *modus operandi*. With reference to the sheet of paper which has been described he said: "P. 2 is supposed to be the 1,000 characters record. The first column is supposed to be the figures and the second column is the amount of betting. P. 2 is the account of 1,000 characters lottery". Cross-examined by Counsel for the accused, he said, "I passed my Std. VII in English School. I am definite that P. 2 does not refer to any shop account".

I know, and the Magistrate knows, all about the 1,000 characters lottery; so for that matter do the majority of the adult inhabitants of this country. There is not the slightest room for doubt that it is a lottery within the meaning of the Common Gaming Houses Enactment. Unfortunately, however, it is not open to any Judge or Magistrate to import his personal knowledge on the point into a criminal trial so as to help out evidence for the prosecution which would otherwise be inadequate to support a conviction. That, I think, must be accepted as well settled in consequence of a number of Singapore cases relating to the Chap Ji Ki lottery going as far back as 1908 (See *Rex v. Lim Kim Watt*[1] and *Lee Seow Kuan v. Rex*[2]. I have been unable to trace any reported decision in the Courts of the Federation on the point and in my opinion, unless and until the matter is decided otherwise by the Court of Appeal, I am bound, though with some reluctance, to follow the Singapore authorities. On this point I would add that were it not for *Lee Seow Kuan's* case I would be prepared to regard the judgment in *Lim Kim Watt's* case as not binding on me, particularly in view of the observations of Fisher, J., in the case *Rex v. Tan Guan*[3].

In the absence of any direct statutory provision to the contrary the rule is that in a criminal prosecution the onus lies on the prosecution to prove every ingredient in the offence charged against the accused person. If the prosecution fail to produce evidence which is believed and which, if unrebutted, would make out every such ingredient then the case must be dismissed without the accused person being called upon to make his defence. If he is called upon to make his defence then the Court must consider the evidence as a whole and, if satisfied that every ingredient of the offence has been proved, then convict.

The offence charged here is 'assisting in carrying on a public lottery' that is to say, a public lottery as defined by the Enactment itself.

In the nature of things this sort of thing is difficult to prove by direct evidence. It is difficult to find witnesses who will say, "I went into such and such a shop. I saw the accused standing behind the counter. I paid him a dollar and he said that his employer would pay me $700 if the numbers 1, 2, 3 in that order were the last three digits of the winning number of the sweepstake to be drawn at Ipoh Turf Club next Saturday".

In the absence of any such evidence the prosecution in cases of alleged conducting of lotteries (I am not concerned here with gaming houses cases) are frequently compelled to rely on the assistance given them by section 11 of the Enactment which at the time of the present case read as follows :—

> "A person selling lottery tickets or found in possession of ten or more lottery tickets or of any account, memorandum or record of stakes or wagers in or relating to a lottery shall be presumed until the contrary be proved to be assisting in a public lottery then in progress."

Giving this section its ordinary grammatical meaning it is clear that it has no operation until it is proved that the paper found in the possession of the accused is related as specified in the section to some sort of arrangement between persons which is a lottery as defined by the Enactment, that is, "any game, method, or device whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance or lot", or possibly (for the word used in the definition is "includes") any other arrangement which in the ordinary accepted usage of

the English language could be described as a lottery. Once these two things are proved then the presumptions arise that the lottery in question is a public lottery then in progress and that the person found in possession of the paper is assisting in it and it is for the accused to produce, if he can, evidence in rebuttal.

In cases of this type the prosection frequently and quite properly rely upon the evidence of detectives and other persons who by reason of their experience have special knowledge of methods of gambling. This sort of evidence is not, strictly speaking, the evidence of experts as that expression is used in the Evidence Ordinance and it is admissible not under section 45 but under sections 49 and 98 of that Ordinance. As regards its admissibility and its effect I would quote the following passage from the judgment of Sir John Beaumont, C.J. (as he then was) in the Bombay case of *Harilal Gordhan v. Emperor*[4] :—

"It may be that under that section (49) a police officer might give evidence that he had had a long experience amongst people who indulged in satta gambling in a particular district, and from that experience, supported by instances which he should be prepared to give so as to establish his means of knowledge, he was satisfied that a system or code prevailed among such persons, and he might then express an opinion (which would be relevant under the section) that the slips in question were prepared in accordance with that system or code and had a certain meaning"

and the following passage from the judgment of Brown, Ag. C.J. in the Singapore case of *Sim Ah Song & Anor. v. Rex*[5] in which His Lordship in using the word "expert" was including not only persons whose evidence is admissible by reason of section 45 but also persons whose evidence is admissible by reason of sections 49 and 98 :—

"The business of an expert witness is to draw upon the store of his knowledge and experience in order to explain some matter which his experience should qualify him to understand. He is quite entitled to express his opinion, which indeed is the natural corollary of his explanation. But a bare expression of his opinion has no evidential value at all. Unless he gives an explanation which supplies the understanding of the subject which the Court lacks, the Court is in no better position than it was before to determine, and if the Court acts upon a bare expression of the expert's opinion the determination of the question becomes that of the expert and not of the Court."

As a footnote to this latter passage I would add the following observation of Terrell, Ag. C.J. in the Singapore case of *Rex v. Soh Eng Chiang*[6] :—

"It is certainly not the duty of a magistrate to supplement the case for the prosecution, but when the evidence is sufficient, but not properly understood, it is always open to a magistrate to question the witness further and ascertain further details for the purpose of satisfying himself upon any point about which he may feel a doubt."

What it came to in the present case was this. The Magistrate had before him the paper which has been described and what he had to determine was whether it was a memorandum of stakes or wagers in or relating to a lottery. That was a question to be determined by him and not by any witness. If the answer was 'Yes' then the presumptions of section 11 operated against the accused. If the answer was 'No' then they did not operate against the accused. The material on which he had to decide the question consisted of the paper itself and the evidence of the Chinese detective-sergeant. If the sergeant had given evidence, as no doubt he well might have done, that he had special means (which he described) of knowing the habits of persons who conducted and assisted in conducting lotteries, that persons who collected subscriptions to lotteries of a particular sort kept records of these subscriptions, and that the paper before the Court in his opinion was such a record of subscriptions to a lottery which consisted in the subscriber placing a stake upon three digits selected by him in the the expectation that his stake would be returned to him a specified number of times over in the event of the three digits selected by him being the last three digits of the winning number of a sweepstake which was to be determined by the drawing of lots, then it would clearly have been open to the Magistrate to find that the paper was a memorandum of stakes in a lottery. If he had so found then the presumptions under section 11 would have arisen and it would have been for the accused to rebut them.

But the evidence of the sergeant did not go quite as far as that. His evidence combined with the actual entries on the paper was sufficient ground for holding, unless and until there was some other evidence to cast doubt on such a conclusion, that the paper was a record of some sort of betting transactions but if judicial notice be not taken of the nature of the 1,000 characters lottery it fell short of supporting the conclusion that the bets recorded on the paper related to a lottery within the meaning of the Enactment. That being so his evidence fell short of enabling the assistance of section 11 to be invoked and without the assistance of that section it was not open to the prosecution on the rest of the evidence to say that a *prima facie* case had been made out.

The appeal is accordingly dismissed.

Appeal dismissed.

WONG LIANG NGUK (f) v. PUBLIC PROSECUTOR.

[A. C. J. (Thomson, J.) September 18, 1953]

[Ipoh — Criminal Appeal No. 49 of 1953]

Gaming — Common Gaming Houses Enactment (Cap. 47), ss. 4(i)(c), 11, 16, 17, 18, 19 and 20 —